

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 29/1997**

1. Shri Harischandra Vishnu Shirodkar,
major, residing at Kerem Waddo,
Chorao, Ilhas, Goa (since
deceased) represented by his legal heirs :

1a) Smt. Malkumi Harischandra Shirodkar,
widow, major,

b) Shri Bhikaro alias Bhavesh H. Shirodkar,
major,

c) Miss Shanti H. Shirodkar, major,

d) Shri Rohidas Priolkar, major,

e) Smt. Maddul Rohidas Priolkar, major,

All r/o. Kerem Waddo, Chorao,
Ilhas, Goa

f) Shri Vithu Priolkar, major,

g) Smt. Kessar Vithu Priolkar, major,

Both residents of Navelim, Diwar,
Ilhas, Goa.

h) Shri Yesso Kerkar/Karmalkar,
major,

i) Smt. Vithe Yesso Kerkar/Karmalkar,
major,
both residents of Karmale, Keri,
Ponda, Goa (since deceased) represented
by legal heirs :

1. Shri Govind Y. Karmalkar, major, son
of deceased,
2. Master Naresh Y. Karmalkar, minor,

son of the deceased,

3. Kum. Savita Y. Karmalkar, minor,
daughter of the deceased.
4. Kum. Sangita Y. Karmalkar, minor,
daughter of the deceased,

J) Shri Uttam Kavlekar, major,

k) Smt. Sumati alias Usha Uttam Kavlekar,
major, both residents of Sao Pedro,
Panvel, Ribandar, Goa.

l) Shri Shivram Sawaikar, major,

m) Smt. Prema Shivram Sawaikar, major,
Both residents of Savai Verem, Ponda, Goa. Appellants.

V/s

1. Shri Babuli Mahadev Chodankar,
major, married, residing at
Kerem Waddo, Chorao, Ilhas, Goa

2. Smt. Monica Joy Gonsalves, major,
married, resident of Britona,
Salvador do Mundo, Bardez, Goa. Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. R. Menezes and Mr. M.
D'Souza, Advocates for the appellants.

Mr. Sudin M. S. Usgaonkar, Advocate for the respondents.

CORAM : F.I. REBELLO, J.

DATE : NOVEMBER 19, 2007.

ORAL ORDER :

Considering the pleadings of the parties, the trial Court was pleased to frame several issues. Two of the relevant issues, as framed, read as under :

“ 1. Whether the plaintiff proves that the suit cashew garden surveyed under No.66/1 of Chorao Village is on lease with him on annual rent of Rs.260/- ?

3. Whether the defendant No.1 proves that the suit property as also the other portion of the property “Kamat” surveyed under no.190, sub-division 1 was leased to the defendant no.1 by the father -in-law of the defendant No 2, Shri Josinho Gonsalves ? ”

2. The trial Court proceeded to consider the said issues and answered issue no.1 in the affirmative and issue no.3 in the negative. The respondents aggrieved, preferred an appeal before the learned Additional District Judge, Panaji being Regular Civil Appeal No.4/92. The learned Additional District Judge merely proceeded on the footing that the suit being for injunction, all that has to be established is the possession by the plaintiff and considering the evidence recorded, came to the conclusion that the respondents herein had established their possession and consequently, allowed the appeal and set aside the Judgment of the trial Court. The appellants aggrieved have preferred this second appeal.

3. After hearing the Counsel and considering the various judgments cited, I am clearly of the opinion that considering the pleadings and the issues framed, the Civil Court ought to have referred the two issues for consideration by the tenancy Court under the provisions of the Agricultural Tenancy Act, bearing in mind the claim of the respective parties as to tenancy/co-tenancy of the property identified under Survey No.66/1 of Village Chorao.

4. In the light of the above, the two issues, as earlier set out, are referred to the Mamlatdar of Tiswadi for consideration, according to law. In the meantime, the proceedings in the second appeal are stayed till such time the proceedings before the tenancy Court are heard and disposed off.

Considering that these proceedings are pending for a long time, the tenancy Court is directed to dispose of the two issues, at any rate, not later than one year from the date of receipt of writ of this Court.

F.I. REBELLO, J.

ssm